

**CHAPTER 74, ARTICLE 4E NMSA 1989**  
**HAZARDOUS CHEMICALS INFORMATION ACT**

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#### **74-4E-1. Short title. (1989)**

Sections 1 through 9 [74-4E-1 to 74-4E-9 NMSA 1978] of this act may be cited as the "Hazardous Chemicals Information Act".

#### **74-4E-2. Purpose of act. (1989)**

The purpose of the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978] is to ensure that current information on the nature and location of hazardous chemicals is available to local emergency planning committees, emergency responders and the public as required by Title III.

#### **74-4E-3. Definitions. (1989)**

As used in the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978]:

- A. "commission" means the state emergency response commission;
- B. "department" means the public safety department;
- C. "emergency responder" means any law enforcement officer, firefighter, medical services professional or other person trained and equipped to respond to hazardous chemical releases;
- D. "hazardous chemical" means any hazardous chemical, extremely hazardous substance, toxic chemical or hazardous material as defined by Title III;
- E. "facility owner or operator" means any individual, trust, firm, joint stock company, corporation, partnership, association, state agency, municipality or county having legal control or authority over buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites. For the purposes of Section 5 [74-4E-5 NMSA 1978] of the Hazardous Chemicals Information Act, the term includes owners or operators of motor vehicles, rolling stock and aircraft;
- F. "local emergency planning committee" means any local group appointed by the commission to undertake chemical release contingency planning;
- G. "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of any hazardous chemical, extremely hazardous substance or toxic chemical. "Release" includes the abandonment or discarding of barrels, containers and other closed receptacles; and
- H. "Title III" means the federal Emergency Planning and Community Right-to-Know Act of 1986.

#### **74-4E-4. Commission created; membership; terms; duties; immunity granted. (1989)**

- A. The "state emergency response commission" is created. The commission shall consist of seven members who shall be qualified voters of the state of New Mexico. All members shall be appointed by the governor. Among the members appointed, there shall be representatives of private industry, federal facilities, public health and public safety.

Appointments shall be made for four-year terms to expire on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointments. Annually, the governor shall designate, from among the members, a chairman of the commission.

- B. The commission shall:
- (1) exercise supervisory authority to implement Title III within New Mexico;
  - (2) prescribe all reporting forms required by the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978];
  - (3) provide direction to the emergency management task force and the hazardous materials safety board;
  - (4) report periodically to the radioactive and hazardous materials committee; and
  - (5) report annually to the governor and the legislature.
- C. The commission may solicit and accept grants from federal or private sources for undertakings that further the purpose of the Hazardous Chemicals Information Act or the Emergency Management Act [Chapter 74, Article 4B NMSA 1978] and may make contracts necessary to carry out the purposes of both of those acts.
- D. Commission members shall not vote by proxy. A majority of the members constitute a quorum for the conduct of business.
- E. Commission members shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].
- F. Immunity from tort liability for emergency response actions, including planning or preparation therefore, is granted to the state, its subdivisions and all their agencies, officers, agents and employees. Any waiver of immunity from tort liability granted under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] shall not be applicable to disaster or emergency response or planning.

**74-4E-5. Notices and reports required; deadlines set. (1989)**

- A. Any facility owner or operator who is required by any section of Title III to file a written notice or report to the commission shall file that notice or report on or before the required deadline with the department.

With the exception of the written follow-up emergency notice required in Section 304(c) of Title III, all notices shall be filed annually and shall confirm or amend information previously filed. Facility owners or operators shall file with the department:

- (1) notice that an extremely hazardous substance, at or above a specified quantity, is present at a facility;
- (2) notice that a release of any chemical substance has occurred at or above reportable quantities determined by the commission. The contents of the notice shall be determined by the commission. The notice shall be filed as soon as practicable following a release;
- (3) an inventory form covering each hazardous material. This form shall be filed annually on or before March 1; and
- (4) a toxic chemical release inventory form. This reporting requirement shall apply to facility owners and operators that have ten or more employees and that are in standard industrial classification codes 20 through 39, as in effect July 1, 1985. The form shall be filed annually on or before July 1.

- B. The commission may simplify forms to be used for reporting, set deadlines for filing written notices or reports and adopt other regulations for the enforcement of the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978].

**74-4E-6. Availability of information to the public; regulations promulgated. (1989)**

- A. The department shall make information, not defined as confidential, gathered under Section 5 [74-4E-5 NMSA 1978] of the Hazardous Chemicals Information Act available to any citizen of the state upon written request.
- B. The department shall promulgate policies and procedures for receiving and processing requests for information under Subsection A of this section.

**74-4E-8. Hazardous chemicals reporting fees; schedule; distribution. (1989)**

- A. Any facility owner or operator required to file an inventory form covering a hazardous material as required in Paragraph (3) of Subsection A of Section 5 [74-4E-5 NMSA 1978] of the Hazardous Chemicals Information Act shall pay at the time of filing a fee of twenty-five dollars (\$25.00) per inventory form.

In no case shall a facility owner or operator pay more than two hundred fifty dollars (\$250) in any calendar year for all forms, notices and reports required by that section.

- B. Federal governmental agencies, the state and its political subdivisions and other public institutions shall be exempt from the payment of any fee imposed in this section.
- C. Fees collected pursuant to this section shall be deposited in the hazardous chemicals information management fund and distributed to the department at the end of each month.
- D. The provisions of this section shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**74-4E-9. Failure to file or pay fees; penalty. (1989)**

After July 1, 1990, any facility owner or operator who knowingly, willfully, and intentionally fails to file any notice, form or report or to pay any fee required by the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978] shall pay a civil penalty no greater than five thousand dollars (\$5,000) for each violation.

All civil penalties shall be deposited in the hazardous chemicals information management fund.